Serbia

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Laws and institutions

1 Multilateral conventions

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The New York convention has had continued validity in respect of Serbia since its ratification by the Socialist Federal Republic of Yugoslavia (SFRY) in 1981. The same declarations made originally by SFRY, all pertaining to article I of the Convention, are still maintained by Serbia: that the Convention only applies to recognition and enforcement of awards made in the territory of another contracting state; that it applies to to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law; and to arbitral awards that have been adopted after the entry into effect of the Convention.

In 2007, Serbia acceded to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention).

Serbia is also a party to the following multilateral conventions:

- the Geneva Protocol on Arbitration Clauses of 1923;
- the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927;
- the European Convention on International Commercial Arbitration of 1961; and
- the Convention on the Settlement of Investment Disputes between States and Nationals of other States of 1965.

2 Bilateral treaties

Do bilateral investment treaties exist with other countries?

There are 45 bilateral investment treaties presently in force in Serbia.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

The primary statutory source of regulation of arbitral proceedings is the Law on Arbitration of 2006 (the Law). This Law regulates arbitration both with (international arbitral proceedings, definition modelled after UNCITRAL Model Law) and without a foreign element (domestic arbitral proceedings).

The law is applicable to all arbitral proceedings in which the place of arbitration is in the territory of Serbia. However, for international arbitral proceedings, most of the provisions have the character of lex dispositivum, so that parties may agree differently, while only some provisions are mandatory. In contrast, the law is mandatory in its entirety to domestic arbitral proceedings.

This statute also governs recognition and execution of domestic and foreign awards, as well as setting aside of domestic arbitral awards. An arbitral award is considered domestic if it has been rendered by a tribunal with a seat in Serbia.

The statute that regulates enforcement of judgments and arbitral awards is the Law on Enforcement and Security of 2011.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

The Law on Arbitration is modelled after the 1985 version of the UNCITRAL Model Law on International Commercial Arbitration.

In contrast to the Model Law, the Law on Arbitration limits the competence of the courts to a prima facie review of the arbitration agreement in the case that a claim on the merits has been brought before a court and the respondent moves for its dismissal on the grounds that the subject matter of the dispute had been covered by the arbitration agreement. The Law on Arbitration instructs the court to refer such matter to arbitration, unless it can be established the agreement is manifestly void, inoperable or incapable of being performed.

Secondly, the Model Law omits 'some incapacity of the party' from the first ground for setting aside arbitral awards.

Thirdly, a ground for setting aside domestic awards has been added to the list of grounds envisaged by the Model Law: 'if the award is based on a false statement of a witness or expert or on a forged document or the award results from a criminal act of an arbitrator or a party.' Falsity of a statement, as well as forgery of a document, need to be established by virtue of a final judgment of competent criminal court.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

There are a few mandatory provisions prescribed by the Law, such as:

- the parties to the proceedings before an arbitral tribunal must be treated equally;
- the arbitral award must include reasoning, resulting from a settlement; and
- if parties wish that the arbitral tribunal applies conflict of laws provisions of the governing law, they must include express stipulation to that effect.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

If the parties have failed to determine governing law, the Law empowers arbitrators to rely on any conflict of laws provisions they deem appropriate, provided that they 'take into account provisions of the pertinent contract and customary norms', for the purpose of determining which law to apply to the merits.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The most prominent arbitral institutions situated in Serbia are the Foreign Trade Arbitration Tribunal (FTAT) and the Permanent Elected Court (Arbitration) of the Chamber of Commerce and Industry of Serbia. So far, the FTAT has a more significant caseload (approximately 20-25 per year) due to the traditional perception of arbitration as a method of solving international commercial disputes.

The Foreign Trade Arbitration Tribunal of the Chamber of Commerce and Industry of Serbia
Terazije Square 23/VII floor
11000 Belgrade
Serbia
e-mail: arbitraza@pks.rs
www.pks.co.yu

The procedure before the Arbitration Tribunal is governed by the Rulebook of the Foreign Trade Arbitration Tribunal. The FTAT maintains the List of Arbitrators, which includes distinguished scholars, attorneys-at-law and experts in various fields of commerce.

The Permanent Elected Court of the Chamber of Commerce and Industry of Serbia
Ul. Resavska No. 13-15
Office 301 / III floor
11000 Belgrade
Serbia
e-mail: izbranisud@pks.rs

According to its rulebook, the Permanent Elected Court may adjudicate disputes without a foreign element, in the sense defined in the Law on Arbitration.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Criminal and status-related matters are regarded as non-arbitrable. The general provision of the Law is that parties may agree to submit to arbitration only civil (pecuniary) disputes that concern rights of which the parties can freely dispose.

Parties, however, may not freely dispose with their rights in respect of existence and priority of patents, so a claim for nullifying a patent may not be submitted to arbitration. Naturally, disputes over breach of licence terms or infringement of patents, for example, may be referred to arbitration.

The Privatisation Agency has, in certain cases that have been publicised, resorted to international arbitration of disputes arising from transactions it has entered into with private parties. However, in 2008, the Supreme Court of Serbia decided that such matters are not arbitrable because the Privatisation Agency is not disposing of the pertinent rights freely, but in the course of execution of its public authority.

The Law on the Capital Market of 2011 empowers the Securities and Exchange Commission to approve all provisions of regulated markets' bylaws pertaining to procedures for resolution of disputes between investment companies that are members of a regulated market in respect of trading in financial instruments.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

The arbitration agreement must be in writing and can be included in the principal contract or represent a stand-alone separate contract. Invalidity of other provisions of a principal contract does not influence validity of the arbitral clause. The requirement of written form is satisfied by any 'exchange of messages by such means of communication that provide evidence in writing of the agreement between the parties, regardless of whether such messages have in fact been signed by the parties' (the Law on Arbitration, article 12 paragraph 3).

An arbitration agreement may also be executed by making a reference in the principal contract either to another agreement in which an arbitration clause exists, or to a document containing a provision on applicable arbitration (such as general terms and conditions).

Finally, an arbitration agreement may be executed conclusively. Upon an arbitration that has been initiated, the agreement may be concluded in two ways: either the respondent expressly agrees to arbitration in a written submission or by virtue of a statement at a hearing, or if the respondent fails to object to jurisdiction of the tribunal before addressing the merits of the dispute.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Enforceability of an arbitration agreement depends on its compliance with the general rules of the law of contracts.

The arbitration agreement is null if it pertains to subject matter deemed non-arbitrable by the Serbian Law on Arbitration.

The arbitration clause would remain in force in the case of unilateral termination (rescission) of underlying agreement. In the case that nullity or invalidity of the principal contract is claimed, the validity of the arbitration clause needs to be examined separately.

In the case of termination of the principal contract by the parties, the validity of the arbitration clause would depend on the agreement of the parties. The parties may also avoid arbitration by conclusive actions even in the presence of a valid arbitration agreement; if one party sues the other before a court and the defendant does not object to the court's jurisdiction.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

The Law establishes a general rule that, absent a contrary agreement of the parties, the arbitration agreement extends to the party to which a receivable under principal contract has been transferred both by virtue of receivable assignment and subrogation.

If an agent signs the arbitration agreement on behalf of the principal, the principal will be bound. If however the agent exceeds the powers bestowed upon him, the principal will not be bound unless he or she accepts such an agreement.

The insolvent company does not lose its legal personality so no grounds for binding any third party arise.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

The Law does not encompass any provision that would either empower a third party to intervene in the arbitral proceedings against the will of the parties, or that would enable a party to the arbitration agreement to force a third party to participate in the arbitral proceedings resulting from that arbitration agreement.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

Serbian law does not allow application of this doctrine.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

The Serbian Law on Arbitration neither expressly allows nor forbids multi-party arbitration agreements. However, the Rulebook of the Foreign Trade Arbitration Tribunal, the most important institutional arbitral body in the country, expressly mentions the possibility of addressing the statement of claim to several respondents.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

Serbian law prevents a person sentenced to a non-suspended prison term to act as an arbitrator as long as the 'legal consequences of the conviction' are in effect (depending on the gravity of the crime committed, this period may last between one and 10 years).

The Law requires neither a Serbian nationality nor any professional quality from arbitrators. The parties may specify required competences. The Law does not place any restriction on the parties' autonomy to establish appointment procedure, nor does it require that arbitrators be appointed from a certain list. The Rulebook of the Permanent Elected Court requires that each party appoints at least one arbitrator from the list maintained by that institution, whereas the second arbitrator may be appointed from outside the list. The Rulebook of the Foreign Trade Arbitration Tribunal only requires that the president of the Tribunal be appointed from the list maintained by that institution.

The Law on Prohibition of Discrimination of 2009 renders unenforceable any restriction imposed upon arbitrators based on their personal qualities and traits that could not be deemed legitimate in view of the arbitrators' role in the proceedings.

16 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

According to statutory law, if parties fail to appoint the sole arbitrator, he or she shall be appointed by the appointment authority defined by the applicable rules of the institutional arbitration, and if there is no such authority or if such authority fails to appoint the arbitrator, the appointment shall be done by a competent court. If the dispute is to be resolved by three arbitrators, a party should appoint one arbitrator within 30 days of being invited to do so. If the invited party fails to appoint the arbitrator, the appointment shall be done by the agreed-upon authority, or, ultimately, by a competent court. The same two instances, and in the same order, shall be competent for appointing the third arbitrator, if the two appointed arbitrators fail to do so. The decision of the competent court cannot be appealed from.

The Rulebook of the FTAT contains a similar mechanism of appointment, the only difference being that in the case of failure of the parties to agree upon the third arbitrator, he or she should be appointed by the president of the FTAT.

17 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

An arbitrator may be challenged if grounds for reasonable doubt exist about his or her independence or impartiality or if he or she does not have the qualifications that the parties have agreed upon. Unless the parties have agreed differently, any challenge needs to be submitted to the competent court within 15 days from the date on which the submitting party gained knowledge of the appointment of the arbitrator or of the reason for challenge. If a party claims that an arbitrator's mandate needs to be terminated due to his or her incapacity to act, or due to his or her failure to act in a timely manner, that party may request from the permanent arbitral institution, or, in the case of ad hoc arbitration, from the competent court, to terminate the mandate of such arbitrator. No tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration has been perceived.

18 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration, and expenses of arbitrators.

The Law requires that each arbitrator signs a written statement on acceptance of duty. The administrative cost of the permanent arbitral institution encompasses arbitrators' fees. For the two institutional arbitrations hosted by the Serbian Chamber of Commerce, the level of such costs is determined in accordance with the respective schedule of arbitration cost. A party filing the statement of claim, a counterclaim, or a set-off claim must make, in advance, a deposit to the secretariat of the permanent arbitral institution for the purpose of securing the source for payment of the arbitration fee as well as of the costs of arbitration.

Costs of transport and accommodation for arbitrators who are foreign citizens or who live outside the venue of arbitration as well as some additional costs of certain procedural actions (special expertise) are not covered by such a deposit.

The Law on Arbitration is silent on the neutrality of party-appointed arbitrators but the Rulebook of the FTAT prohibits that employees of a party, members of its governing bodies and its permanent associates be appointed as arbitrators in disputes in which such party is involved.

19 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

The Law on Arbitration does not expressly address this issue.

Due to the nature of the contractual relationship between parties and arbitrators, which is a contract for services, the arbitrators become liable for damages if they breach the contract by operation of general provisions of the law of contracts.

Jurisdiction

20 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

Courts do not proceed on their own (ex officio) to establish whether an arbitration agreement is in force in respect of a dispute. If a lawsuit is filed before a court in a matter covered by an arbitration agreement, the court shall reject the lawsuit on the ground of lack of jurisdiction only upon objection of the party sued. The objecting party must raise such an objection before it engages in litigating the claim on the merits.

21 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Domestic arbitral tribunals recognise Kompetenz-Kompetenz. An arbitration tribunal may decide about its own competence, including the objection alleging lack or deficiency of effect of the agreement on arbitration. Jurisdictional objection has to be raised by the respondent before it submits the answer to the statement of claim, which means even after the respondent has appointed the arbitrator. The tribunal can decide on the jurisdictional objection either in the form of a finding in respect of a preliminary question, or in the final award.

A party claiming lack of jurisdiction on the part of the arbitral tribunal may initiate proceedings for setting aside of arbitral award before court within three months from the day on which it has been served with the subject award.

Arbitral proceedings

22 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

If agreement of the parties in this respect is lacking, the Law requires that the arbitral tribunal determines the language of the proceedings by taking into account the place of arbitration and the language that the parties had used in their communication. The tribunal should determine the place of the arbitral proceedings by taking into consideration the circumstances of the case, comprising the suitability of a certain venue for the parties as well.

In contrast to the law, the Rulebook of the FTAT stipulates that if prior agreement of the parties in respect of place and language of arbitration is lacking, the proceedings shall be conducted in the Serbian language at the seat of that institution.

23 Commencement of arbitration

How are arbitral proceedings initiated?

The Serbian Law provides a default solution, whereby proceedings shall be initiated by submission of a statement of claim or of a notice of arbitration to the permanent arbitral institution. The statement of claim should include the remedy sought, the contentious points at issue and factual ground of the claim. A notice of arbitration may be submitted before the statement of claim is filed.

The Rulebook of the FTAT sets forth the mandatory content of both the notice of arbitration and of a statement of claim that are submitted to that institution:

- identity of claimant and respondent;
- evidence of existence of an arbitration agreement; and
- appointment of arbitrator or arbitrators.

In addition to these mandatory elements, the statement of claim shall include the claim for legal relief, the description of the subject-matter of the dispute and requisite evidence. The notice of arbitration or the statement of claim, including evidence, need to be submitted both in the Serbian language and in the language of the principal contract, in the case the contract is not in Serbian.

24 Hearing

Is a hearing required and what rules apply?

According to both the Serbian Law on Arbitration and the Rulebook of the FTAT, the arbitration tribunal decides if the hearing should be held or if it shall conduct proceedings based on parties' submissions, unless the parties have agreed otherwise. If at least one of the parties requests the hearing, then it becomes mandatory.

If the arbitrators are satisfied with written submissions and evidence, they shall notify the parties that the award will be made without a hearing. If within 15 days from the receipt of such notification none of the parties has requested a hearing, the arbitrators may render the award.

25 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

All evidence is acceptable. Usually, either both parties are called to testify or none. Witnesses are not required to take an oath. The arbitral tribunal may not impose sanctions upon witnesses. The arbitral tribunal appoints expert witnesses for the purpose of providing answers to questions determined by the tribunal, and such expert witnesses are invited to participate in a hearing after they provide their expert opinion, if not otherwise agreed by the parties.

26 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

The arbitration tribunal may request assistance from court in establishing evidence. The Law on Arbitration does not elaborate terms and conditions under which arbitral tribunals may exploit this option.

The role of courts is significant in respect of recognition and enforcement of arbitral awards.

27 Confidentiality

Is confidentiality ensured?

The Law on Arbitration does not expressly guarantee confidentiality of arbitral proceedings. The Rulebook of the FTAT only states that hearings will be closed to the public.

Interim measures

28 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

The court can assist the arbitration process by ordering interim measures both before and after the arbitral tribunal has been established. As a matter of wording of the applicable statute, there is no exclusivity of courts in respect of administration of interim measures. However, Serbian law does not expressly regulate the manner in which an interim measure issued by arbitral tribunal may be enforced by competent courts. Case law is also lacking in this respect.

29 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Serbian arbitration law does not provide for the institution of emergency arbitrators.

30 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

Interim measures may be ordered by the arbitral tribunal at the request of a party, if the tribunal considers such measures necessary due to the subject-matter of the dispute. The arbitral tribunal may at the same time request that the opposing party provide appropriate security.

As already noted, Serbian law does not expressly stipulate the manner in which an interim measure ordered by an arbitration tribunal may rely on enforcement by courts. Case law to that effect is also lacking.

Awards

31 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

Both the law and the FTAT Rulebook stipulate that a majority is sufficient for the award to be rendered, so that a unanimous vote is not required. There are no consequences for the effect of the award if an arbitrator dissents.

32 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

An arbitrator who does not agree with the opinion or reasoning of the majority may enclose his or her dissent in writing, which is delivered to the parties together with the award if that arbitrator so requests. Dissenting opinions have no influence on the validity and effect of the award.

33 Form and content requirements

What form and content requirements exist for an award?

According to the Law on Arbitration, each arbitral award must be made in writing and must be signed by the arbitrator or arbitrators. The award needs to contain the opinion on the merits of the dispute, arbitration costs, and reasoning, unless the parties have excluded the latter. The decision must state the date on which and the place where it was issued.

34 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

The Law on Arbitration does not foresee any time limit. The FTAT Rulebook, however, is more restrictive, ordering that proceedings before tribunals of that institution must be completed within a year from the date of constitution of the tribunal, that is, from the appointment of the sole arbitrator. That term may be extended by the arbitrator or arbitrators upon approval of the Managing Board of the Chamber of Commerce. The same rulebook also requires that the final award be made within 60 days from the last hearing or from the last in camera meeting of the arbitral tribunal, whichever happened later.

35 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

The date of delivery of the award is material in Serbian law. From that point in time the statute of limitations is calculated for requests for additional awards, for requests for correction of typographical or computational errors in the award, and for challenging the award.

36 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Arbitration tribunals in Serbia may render final, partial, and interim awards.

37 Termination of proceedings

By what other means than an award can proceedings be terminated?

Arbitral proceedings may also be terminated by virtue of settlement of the parties. The parties may also request that an award based on terms agreed upon by them be rendered. An arbitral decision based on a settlement has the effect identical to any other award, except it does not have to contain the reasoning.

According to the FTAT Rulebook, the only formal requirements for a settlement are that it needs to be put in writing, read and signed by the parties before the Court of Arbitration.

Nothing in the law prevents arbitral tribunals from rendering default awards.

38 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards?

In principle, Serbian law on civil court procedure allocates costs to the losing party. This principle applies to arbitration proceedings as well, with some exceptions.

The Law on Arbitration requires that the decision on costs of the proceedings be included in the award. In general, the costs of administrative fees, arbitrators' fees and expenses, and the fees and costs of legal representatives of the parties are considered as necessary. When deciding the necessary level of expenses for legal representatives, the applicable bar association schedule of fees usually serves as a guideline.

39 Interest

May interest be awarded for principal claims and for costs and at what rate?

Level of interest that may be awarded for principal claims and costs depends on the substantive governing law.

Proceedings subsequent to issuance of award

40 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Serbian law does not expressly empower arbitrators to interpret the award ex post facto, and does not assign any effect to such interpretation.

Once the award is rendered, any amendments or corrections thereto may be made only by motion of one of the parties. Such a motion may be filed within 30 days of the date of receipt of the award. A party may request linguistic and typographical corrections, interpretation of certain portions of the award or additional decision in respect of claims with which the tribunal failed to deal. The additional correction, interpretation or additional decision represents an integral part of the original award.

41 Challenge of awards

How and on what grounds can awards be challenged and set aside?

Only domestic awards may be challenged and set aside. The list of grounds for setting aside an award is as follows:

- invalidity of the arbitration agreement;
- a party was unable to present its case;
- the tribunal decided on matters not submitted to arbitration;
- composition of the tribunal or the procedure followed was not in accordance with the arbitration agreement, or mandatory provisions of Serbian law, if applicable;
- the award is based on false evidence, or results from a criminal action of an arbitrator or a party, provided that such falsity or criminal act is finally proven before competent court;
- the subject matter of the dispute is not arbitrable under Serbian laws; and
- the award is contrary to Serbian public order.

42 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

One judicial instance is available for making an appeal from the judgment on the claim for setting aside an award. It generally takes about one year until a court decision is issued on appeal. The costs of appeal depend on the value of the claim. Court fees are determined in accordance with the Court Fees Act, while the costs of legal representation in accordance with the applicable bar association schedule of fees. The costs are generally borne by the losing party.

Update and trends

Enactment of the Law on Arbitration of 2006 marked a beginning of an effort towards promotion of arbitration as means of resolving not only disputes with foreign elements, but also purely of domestic ones. Consequently, the Permanent Elected Court has been established by the Serbian Chamber of Commerce for purely domestic arbitration disputes.

Serbia has recently been a party to two high profile arbitration proceedings before the ICC in Paris. One was in a dispute with a company that had acquired tourist company Putnik. The other was over a failed concession agreement, in which it acted as respondent to a consortium of Austrian construction companies, Alpine Bau and Porr. While the former has been finally adjudicated, the latter seems to have stalled, possibly as result of settlement negotiations. Information on both proceedings has not been publicised.

43 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

A domestic arbitral award has the legal effect of a final domestic court judgment.

A foreign arbitral award may acquire the same legal effect as a final domestic court judgment if it is recognised in a specific procedure before domestic courts.

Recognition and enforcement of a foreign arbitral award may be refused at the request of the party against whom it has been rendered if that party furnishes proof that the arbitration agreement was not valid, the party against whom the award was issued had not been given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case, the award deals with a dispute not falling within the terms of the arbitration agreement or contains decisions on matters beyond the scope of arbitration agreement, the arbitral tribunal or the arbitral proceedings were not in accordance with the arbitration agreement or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made. If the competent court finds that the subject matter of the dispute was not capable of settlement by arbitration under the law of the Serbia or that the effects of the award are contrary to the public order of Serbia, the competent court shall refuse recognition of the award.

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44 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

The Law expressly enumerates as a ground for refusing recognition of a foreign award the fact that such an award had been made null and void in the state in which the award had been rendered.

45 Cost of enforcement

What costs are incurred in enforcing awards?

The costs of subjecting an award to recognition and enforcement in Serbia consist mainly of court filing fees and costs of legal representation. The court filing fees depend on the value of arbitrated claims, and may range between several hundred and several thousand euros.

Other

46 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

One possible influence of the overall judicial system would be that witness testimony would be preferred in comparison to statements of witnesses in writing.

47 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

All foreigners need to notify the police of their residence, hotels do that for their guests, but in the case of an apartment being leased, the foreigner is obliged to register with the police.

In principle, provision of legal advice as a profession may only be exercised by attorneys licensed in Serbia. However, appearance of a foreign-licensed attorney on an ad hoc basis (for a particular case only, and not on a regular basis) would not be considered as an exercise of a profession and thus would be allowed.

Services of arbitrators are not considered as provision of legal advice, regardless of the governing law applied.